

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-6125**

**PETITION OF JAMES T. BETHEL**  
(Hearing held April 5, 2006)

**OPINION OF THE BOARD**  
(Effective date of Opinion, May 18, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.323(b)(1) and 59-B-3.3(e). The petitioner proposes the construction of a two-story addition that requires a 0.91 foot variance as it is within 6.09 feet of the side lot line and a chimney that requires a variance of 0.92 feet as it is with 2.08 feet of the side lot line. The required side lot line setback for the two-story addition is five (5) feet and the required side lot line setback for the chimney is three (3) feet.

Brian McCarthy of Bennett, Frank, McCarthy Architects, Inc., appeared with the petitioner at the public hearing.

The subject property is Lot 1, Block 4, Hillwood Manor Subdivision, located at 7201 13th Place, Takoma Park, Maryland, 20912, in the R-60 Zone (Tax Account No. 03173421).

Decision of the Board: Requested variances **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes the construction of 22.5 x 13.07 foot two-story addition.
2. Mr. McCarthy testified that the subject property is a corner lot located at the intersection of 13th Place and Elson Place. Mr. McCarthy testified that the subject property has the smallest buildable footprint on its street and that the application of the required setbacks results in a maximum buildable envelope that is 26% of the lot's total area. Mr. McCarthy testified that the other eleven lots on the petitioner's street, have use of an average of 38% of the lots' total area and noted,

however, that the maximum allowable lot coverage in the R-60 Zone is 35%. See, Exhibit [buildable area diagram].

3. Mr. McCarthy testified that an existing one-story structure and a covered porch located in the northern side yard, will be removed and replaced with the two-story addition. Mr. McCarthy testified that the subject property has large poplar tree located in the rear yard that further restricts construction on the subject property. The City of Takoma Park has a tree ordinance that restricts the removal of existing trees. The City's tree ordinance requires residents replace any trees removed or to pay into a tree fund. See Exhibit 7(f) [photo of existing covered porch and distance between neighboring property].

### **FINDINGS OF THE BOARD**

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the irregular shape of the subject property and its configuration adversely constrain the lot's buildable area. The Board finds that the buildable area of the subject property is limited to 26% of the total area, the smallest footprint, on a percentage basis, of all lots on the same block.

The Board finds that these are exceptional circumstances which are peculiar to the subject property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owner.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variances requested for the construction of two-story addition and a chimney are the minimum reasonably necessary.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly*

*adopted and approved area master plan affecting the subject property.*

The Board finds the proposed construction will continue the residential use of the property and that the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

*(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that proposed construction will replace an existing one-story structure and a covered porch and that the variances will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variances of 0.91 feet from the required seven (7) foot side lot setback for the construction of a two-story addition and of 0.92 feet from the required three (3) foot side lot line setback for construction of a chimney are granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, and the testimony of his witness, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 5(a) through 5(c) [elevations and floor plan] and 11 [revised site plan].

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Caryn L. Hines, seconded by Wendell M. Holloway, with Donna L. Barron, Angelo M. Caputo and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

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Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 18th day of May, 2006.

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Katherine Freeman  
Executive Director

**NOTE:**

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.